

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.29296 of 2014

ORDER:

Heard the learned counsel for the petitioner and the learned Government Pleader for Revenue, appearing for the respondents.

2. An extent of Ac.22.00 gts in Sy. No.72/23 of Battisavaragaon village, Adilabad Mandal, Adilabad District, was originally assigned to one Syed Pasha under Special Laoni Rules, 1950, vide patta certificate No.37 dt.26-01-1953. On his death, his son Mohamood Shah, who is the husband of the petitioner, succeeded to the same.

3. In 1994, the revenue authorities attempted to forcibly evict the petitioner's husband from the said land. He then filed W.P.No.113247 of 1994 before this Court and by order dt.24-06-1994, this Court directed the revenue authorities not to dispossess him without following due process of law. Petitioner's husband then requested the revenue authorities to issue pattadar pass books and title deed to him in respect of the subject land and when they failed to do so, he filed W.P.No.27006 of 1999 before this Court which was disposed of on 21-01-2000 directing the revenue authorities to consider petitioner's husband representation for issuance of the said documents.

4. However, this order was not implemented in spite of several representations by him. Ultimately, the Tahsidlar, Adilabad

Mandal (4th respondent) issued notice dt.29-08-2005 directing petitioner's husband to appear before him on 10-09-2007. When he appeared before 4th respondent, he issued a letter dt.20-09-2007 to the petitioner's husband stating that the land had already been resumed by the then Tahsildar on 23-05-1994 itself on the ground that the assignee had not cultivated the land within three years from the date of allotment.

5. Since the petitioner's husband came to know about this only on 20-09-2007, he preferred appeal to the Revenue Divisional Officer, Adilabad (3rd respondent). When the said appeal was not disposed of, petitioner's husband filed W.P.No.27250 of 2007 in this Court and this Court by order dt.28-04-2009 had directed 3rd respondent to dispose it of within three months and specifically stated that in case, the appeal is to be allowed, the petitioner should be reinducted into possession of entire extent of Ac.22.00 gts issued pattadar passbook as a matter of course.

6. The 3rd respondent issued proceedings on 28-03-2011 directing 4th respondent to verify the resumption proceedings allegedly issued in 1993-94 of assignment made to petitioner's father-in-law and to take action as per rules and submit compliance.

7. Thereafter 4th respondent conducted an enquiry and issued proceedings dt.22-11-2012 holding that the land was not kept fallow, and had been brought under cultivation within three years from the date of assignment, and that the cancellation of the said

assignment to the petitioner's father-in-law was wrong. He however declined to grant pattadar passbooks and title deeds to the petitioner on the ground that the petitioner was not in possession at that point of time and there was certain encroachments in the land.

8. In the meantime, petitioner's husband had died on 10-09-2009 and petitioner and her six children succeeded to the property. Petitioner contends that the encroachment in the subject land had also been removed by the Government, but the Government has retained the land and it is bound to return possession of the land to the petitioner. Petitioner contends that she gave a representation on 06-09-2014 to the respondents but no action has been taken by the respondents to implement the order dt.28-04-2009 in W.P.No.27250 of 2007.

9. Counter affidavit has been filed by 4th respondent. None of the facts stated by the petitioner are disputed. However, a stand is taken in the counter affidavit that there was violation of conditions of assignment and so the petitioner is not entitled for pattadar pass books, and that the petitioner has not impleaded the persons in possession of the property as party respondents.

10. This stand taken by the respondents is not tenable having regard to the finding of the 4th respondent in his proceedings dt.22-11-2012 that the very cancellation of the assignment given to the petitioner's father-in-law was mistaken. He categorically held that the pahanies in the year 1952-54 showed that the petitioner's

father-in-law brought the land under cultivation within three years only from the date of assignment on 26-01-1953 and there were no grounds to resume the land assigned to prior to 1958 under Special Laoni Rules.

11. This being the factual position, in between 1994 and today, if the land has been encroached upon, it is duty of the respondents to evict the encroachers and restore the possession the land to the petitioner, since in its order dt.28-04-2009 in W.P.No.27250 of 2007, this Court categorically held that if the petitioner's appeal is allowed by the RDO, Adilabad, and the resumption of land is cancelled, the petitioner deserves to be reinducted into possession of the entire extent of Ac.22.00 gts.

12. In the present case, the 3rd respondent had directed 4th respondent on 28-03-2011 to verify the validity of resumption proceedings in 1993-94, and it is only thereafter 4th respondent issued the proceedings on 22-11-2012 holding that the resumption of the land from the original assignee is contrary to law.

13. Though the 4th respondent held in the said order that there are structures in the land and that pattadar pass books and title deeds cannot be given, the Memo dt.23-03-2014 issued by 4th respondent itself states that there are no constructions or huts in the land claimed by the petitioner.

14. Having regard to the said Memo dt.23-03-2014, it is not known on what basis the 4th respondent filed counter affidavit stating

that pattadar pass books and title deeds cannot be given since the land is encroached by third parties by raising residential houses and that the land has lost its characterization as agricultural lands and the provisions of the A.P. Rights in Land and Pattadar Passbooks Act, 1971 would not apply. This stand in the counter affidavit of 4th respondent is perverse and therefore cannot be countenanced.

15. Accordingly the Writ Petition is allowed with costs of Rs.5,000/- (Rupees Five Thousand only) to be paid by 1st respondent to the petitioner; the 4th respondent is directed to restore possession of the subject land to the petitioner within four weeks from the date of receipt of a copy of this order; and shall also take action to issue pattadar pass books and title deeds to the petitioner under the A.P. Rights in Land and Pattadar Passbooks Act, 1971 within the same period.

16. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 05-01-2018

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